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TREATY WITH NEW ZEALAND ON THE DELIMITATION OF THE MARITIME BOUNDARY BETWEEN THE UNITED STATES AND TOKELAU

MARCH 21, 1983.—Ordered to be printed

Mr. PERCY, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 97–5]

The Committee on Foreign Relations to which was referred the Treaty between the United States of America and New Zealand on the Delimitation of the Maritime Boundary between the United States of America and Tokelau, signed at Tokelau on December 2, 1980, having considered the same, reports favorably thereon without amendment and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

The purposes of the treaty are to establish the maritime boundary between American Samoa and Tokelau, to resolve the status of three Tokelauan islands in the area, and to confirm United States sovereignty over Swains Island.

BACKGROUND

The establishment of a 200 nautical mile fishery conservation zone off the coasts of the United States, including American Samoa, pursuant to the Fishery Conservation and Management Act of 1976, and the establishment by New Zealand of a 200 nautical mile zone off the coasts of Tokelau, created the need for agreement on a maritime boundary in order to avoid enforcement problems and to provide for certainty in the development of resources in the area where such 200 nautical mile zones overlap.

In connection with establishing the maritime boundary it was necessary to address and resolve the issue of sovereignty over the islands of Atafu, Nukunono, and Fakaofo which together comprise Tokelau. These atolls have a total population of 166 people and a land area of four square miles. In 1889 the British declared a protectorate over the

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islands and formally annexed them in 1916. In 1925 administration of the Tokelau islands was transferred from the United Kingdom to the Dominion of New Zealand, which has continued to administer them. Formal sovereignty was transferred from the United Kingdom to New Zealand in 1948.

It was not until 1939 that the United States disputed the British or New Zealand claims of sovereignty. The United States based its claim to the islands on mapping and on the Guano Act of 1856. Two of the islands were included in a United States Guano Mining Bond in 1856 but there is no indication that an American company has ever mined the islands for guano. The United States has never occupied these islands or exercised governmental jurisdiction over them. Measured against the longstanding United Kingdom/New Zealand claim, the United States claim to these islands has no substantial basis under applicable principles of international law, according to the Department of State. The U.S. claim is not supported by any other nation, including its closest allies. Continued assertion of these claims is inconsistent with the United States interest of maintaining friendly relations with the peoples of the South Pacific. The islands have no appreciable strategic or economic value to the United States.

Delimitation of the maritime boundary also involves the issue of sovereignty over Swains Island in American Samoa. Swains, a privately owned island, was annexed to American Samoa in 1925. The Tokelauans have claimed that Swains Island is historically and culturally part of Tokelau, and they have so informed the United Nations. This Treaty effectively extinguishes the Tokelauan claim and confirms United States sovereignty over Swains.

The Treaty was negotiated through diplomatic channels and was concluded between the United States and New Zealand, rather than Tokelau, because Tokelau is a non-self-governing dependency of New Zealand. The Treaty was signed by the United States Ambassador to New Zealand and by Itieli Pereira, Amusia, Patea, and Aloision Ineleo of Tokelau, who were authorized to act on behalf of New Zealand.

COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on December 1, 1981. The following individuals have testified on this treaty: Deputy Assistant Secretary of State for East Asian and Pacific Affairs Daniel A. O'Donohue; Ambassador William Bodde, U.S. Ambassador in Fiji; Rear Admiral Donald S. Jones, Director for East Asian and Pacific Affairs in the Office of the Assistant Secretary of Defense for International Security Affairs; Mr. Terry Fortune, Assistant Legal Advisor for East Asia, Department of State; Mr. David Colson, Associate Legal Advisor for Oceans, Environmental and Scientific Affairs, Department of State; the Honorable Peter Coleman, Governor of American Samoa; Mr. Mark J. Seidenberg of Los Angeles, California; and the Honorable Frederick W. Rohlfing of Honolulu, Minority Leader of the Hawaii House of Representatives.

On January 28, 1982 the Committee considered the treaty, but, in the absence of a physical quorum, deferred a vote until February 2. On this date, the Committee, by a vote of 13 to 2, ordered it reported

favorably to the Senate for its advice and consent. Voting in favor of the treaty were Senators Percy, Baker, Hayakawa, Lugar, Kassebaum, Boschwitz, Pressler, Pell, Biden, Glenn, Tsongas, Cranston, and Dodd. In opposition were Senators Helms and Zorinsky.

Pursuant to rule 30.2 of the Senate, the treaty, not having been considered by the Senate, was returned to the Committee at the adjournment of the 97th Congress.

On January 27, 1983, the Committee considered the treaty and agreed to Senator East's request that he be allowed to testify before the Committee in order to outline the reservations which he held concerning the treaty. Senator East expressed particular concern that the national interest of the United States had not been taken fully into account. Accordingly, the Committee held a public hearing on March 8, 1983. The following individuals testified: Senator East, Admiral Thomas Moorer, U.S. Navy (Retired), and Rear Admiral Robert J. Hanks, U.S. Navy (Retired).

The Committee considered Senator East's testimony particularly in the light of the views of Secretary of Defense Weinberger (see appendix), of the U.S. Commander-in-Chief, Pacific (see appendix), of the Department of State (see appendix), and of the Prime Minister of New Zealand (see appendix). The Committee concluded that the treaty was in the best interests of the United States and that the treaty as submitted best protected those interests on a long range basis. The Committee took particular note of the relationship of the treaty partner to our ANZUS allies, Australia and New Zealand, and of our allies' views in support of U.S. ratification. (Hearing printed in the appendix to the report on Treaty of Friendship with Tuvalu.)

On March 8, 1983, the Committee again considered the treaty, but delayed further consideration for one week. On March 15, 1983, the Committee considered the treaty, but, in the absence of a physical quorum, deferred a vote until March 16. On this date, the Committee, by a vote of 15 to 1, ordered the treaty reported favorably to the Senate for its advice and consent to ratification. Voting in favor of the treaty were: Senators Percy, Baker, Lugar, Mathias, Kassebaum, Boschwitz, Pressler, Murkowski, Pell, Biden, Glenn, Sarbanes, Zorinsky, Tsongas, and Dodd. In opposition was Senator Helms.

SECTION-BY-SECTION ANALYSIS

The Department of State has provided the following section-by-section analysis of the treaty:

The operative portion of the Treaty consists of seven articles.

Article I sets out the specific geographic coordinates which define the maritime boundary. This boundary is approximately 318 nautical miles in length, and consists of 7 segments. At its closest point it is 48 nautical miles from the nearest American Samoa island. The boundary was negotiated on the basis of internationally accepted principles deemed by the parties to be applicable in view of the relevant geographic circumstances.

Article II sets out the geodetic and computational bases used for describing the boundary, including the particular charts from which calculations were made in establishing the boundary.

Article III describes the legal effect of the maritime boundary. It provides that on the Tokelau side of the boundary, the United States will not claim or exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil, and that, on the United States side of the boundary, there shall not be claimed or exercised for any purpose in respect to Tokelau sovereign rights or jurisdiction over the waters or subsoil. Since Swains Island lies on the American side of the boundary, this effects the renunciation by New Zealand of all claims to that island with respect to Tokelau. Further, the preamble states that New Zealand has never claimed or administered as part of Tokelau any of the islands presently administered by the United States as part of American Samoa, which, by statutory definition, includes Swains.

Article IV is a disclaimer provision which makes clear that agreement on the maritime boundary does not constitute recognition of the jurisdiction that the other party may claim to exercise in the delimited area beyond that otherwise recognized by each party to the Treaty. In this connection the United States and New Zealand maintain different positions concerning the breadth of the territorial sea and the nature of jurisdiction that may be exercised within the 200 nautical mile zone. Article IV is intended to preserve the respective portions of each party.

Article V is an express statement that the United States by virtue of this Treaty recognizes that sovereignty over the islands of Atafu, Nukunono, and Fakaofo is vested in the people of Tokelau and exercised on their behalf by the Government of New Zealand.

Article VI is a general cooperation provision. It is in the United States interest to cooperate with New Zealand in order to promote the social and economic development and stability of the region.

Article VII provides that the English language text is the official Treaty text and that the Treaty will enter into force on the date of the exchange of instruments of ratification.

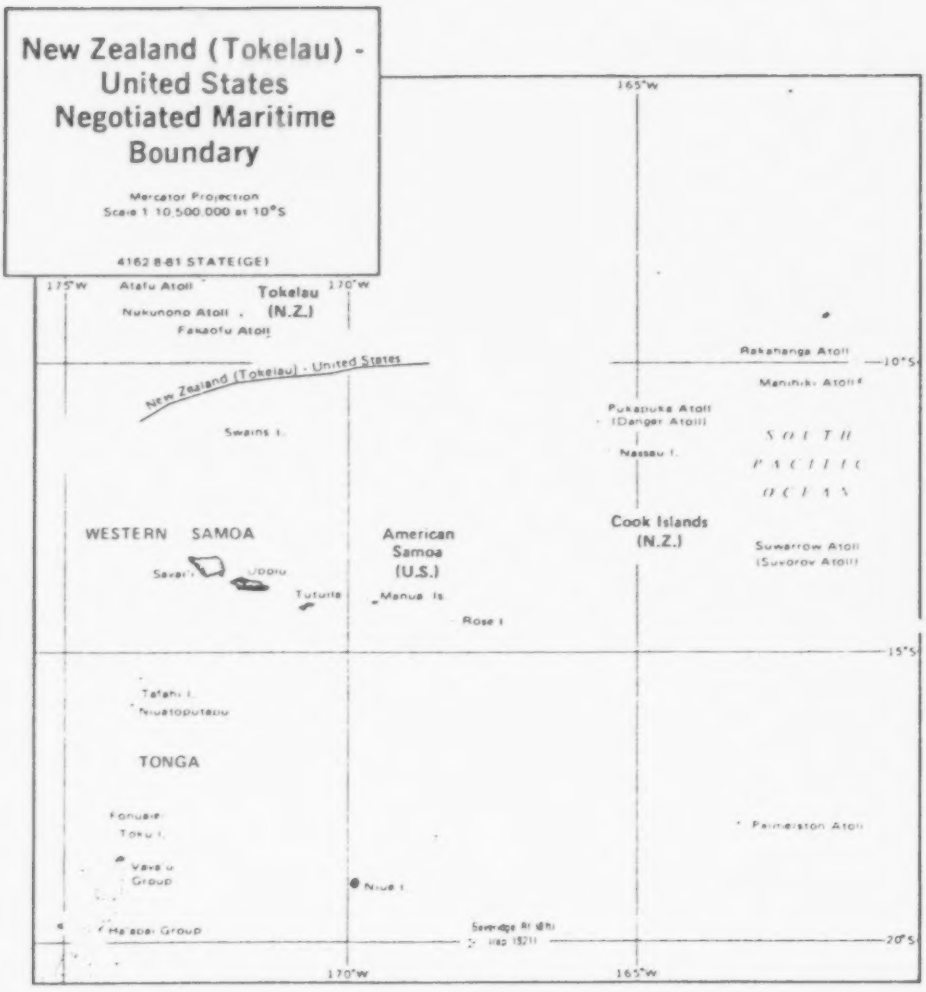
In connection with the negotiation of the Treaty, discussions took place relating to the fishery resources within the Tokelau Islands' 200 nautical mile zone. The attached letters set forth the positions and the understandings of the two sides. The United States sought and received assurances that United States flag vessels and foreign vessels supplying the canneries in American Samoa will not be barred from seeking licenses to fish in the Tokelauan 200 mile zone.

COST ESTIMATE

The treaty will have no budgetary impact and ratification will not require the authorization or appropriation of any additional funds, according to the Administration.

TEXT OF RESOLUTION OF RATIFICATION

Resolved (*two-thirds of the Senators present concurring therein*), That the Senate advise and consent to the ratification of the Treaty between the United States of America and New Zealand on the Delimitation of the Maritime Boundary between the United States of America and Tokelau, signed at Tokelau on December 2, 1980.



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APPENDIX

THE SECRETARY OF DEFENSE,
Washington, D.C., March 7, 1983.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR CHUCK: As your Committee resumes deliberations on the four Pacific Island Treaties, I would like to share with you my deep concern that delay in ratification is jeopardizing our security interests in the Pacific.

Since the end of World War II, the island states of the South Pacific have undergone extensive political change. Instead of dealing with dependencies of former colonial powers, we must negotiate with newly independent states which are entitled to respect for their sovereignty. By renouncing our extremely tenuous claims to the islands in dispute we remove impediments to developing enduring relationships and enhance the ability to achieve our strategic objectives.

Our strategic interests in the South Pacific are focused on developing states that are stable, peaceful, free from great power rivalry, and that look on the United States as a dependable friend. Failure to approve these carefully crafted and negotiated treaties will prejudice our growing relations with those island states and will inevitably lead to resentment and distrust of the United States. Moreover, failure to ratify the treaties strains rather than strengthens our relationships with all the Pacific Island states.

From a Defense perspective, we feel that the treaties adequately protect United States strategic interests. We have made a thorough study of our requirements for the islands covered by the treaties. We do not have now, nor do we foresee, a military requirement anywhere in the immediate area of the islands covered by the treaties. Indeed, the only U.S. installations in the region since World War II (missile testing facilities on Canton, Enderbury, Birnie and Hull Islands) were closed in 1979 because they no longer met our mission requirements and were too costly to maintain.

Suspicion of our motives and intentions provides the ideal opening for political penetration of the region by the Soviet Union. Failure to ratify the treaties would also introduce unnecessary irritants in our relationships with our ANZUS allies who are deeply concerned with and committed to stability in the region. Australian and New Zealand officials at the ministerial level have raised this issue with me personally. I share their view that the security of the South Pacific and the important lines of communication that pass through it serve our mutual security interests and depend in large measure on the continued pro-Western orientation of the newly independent island

states. Our security interests and those of our allies are best served if the states in the region are friendly to us, are disposed to permit access to the region by our military forces should a contingency arise, and oppose a Soviet presence—military, political, or economic.

As in the past, the Department of Defense strongly supports the treaties as being in our national interest. I urge that the Senate provide its advice and consent so that the treaties may be formally ratified.

Sincerely,

CASPAR W. WEINBERGER.

COMMANDER IN CHIEF PACIFIC,
Camp H. M. Smith, Hawaii, March 9, 1983.

Hon. CHARLES H. PERCY,
U.S. Senate,
Senate Dirksen Building,
Washington, D.C.

DEAR SENATOR PERCY: I am pleased to share with you my reasons for supporting ratification of the four Pacific islands treaties that are now being considered by your committee.

As you are aware, since World War II the only military installations the U.S. had anywhere in the immediate area of these islands was a missile test facility with the headquarters on Canton Island, with some additional instrumentation on Enderbury, Birnie and Hull Islands. As for the Canton Island complex, it was used for a few years in the early 1970's and subsequently maintained in a caretaker status at a cost of several million dollars a year. By 1979 this cost could no longer be justified and the facilities were closed. I might add that our use of these islands was for test and research and not for prospective combat operations. Our current and presently foreseen missile test requirements are and can be met by the Kwajalein Missile Range and occasional testing in broad ocean areas.

My concern with the islands, since they are currently not in use militarily, is to deny their use to unfriendly powers and to assure our reentry if necessary. The treaties with Kiribati and Tuvalu specifically provide against military use of the islands by third countries without consultation with the U.S. while New Zealand's responsibility for the defense of the Cook Islands and Tokelau gives assurance that those islands will not be used by hostile forces. In the unlikely event that the United States were to develop a requirement for bases in Kiribati, the treaty provides for possible future use of the Canton complex subject to an agreement to be negotiated between the two governments. The treaty with Tuvalu provides that in times of international crisis, the two countries agree to consult on any requests we might make for use of Tuvaluan territory for military purposes.

The point of all this is that the United States has no present need for strategic bases in these islands and the treaty provisions adequately protect our interests. From my perspective, United States military interests in the area covered by these treaties have been properly addressed and ratification of them would be in our best interest.

Sincerely,

R. L. J. LONG.

U.S. DEPARTMENT OF STATE,
Washington, D.C.

Hon. CHARLES PERCY,
Chairman, Senate Foreign Relations Committee,
U.S. Senate.

DEAR MR. CHAIRMAN: I want to reiterate this Administration's strong interest in prompt and favorable Senate consideration of the four Pacific Islands Treaties that are once again before the Committee. The four treaties, the Treaty of Friendship with Kiribati, the Treaty of Friendship with Tuvalu, the Treaty with the Cook Islands on Friendship and Delimitation of the Maritime Boundary, and the Treaty with New Zealand on the Delimitation of the Maritime Boundary between the United States and Tokelau, are very important to our interests in the Pacific. Our continued failure to act on these treaties has not only weakened our credibility with the Pacific Islands states, but has strained our relations with our ANZUS allies as well.

The treaties serve several U.S. interests in the region. Important lines of communication to our Australian and New Zealand allies and onward to the Indian Ocean pass through this vast ocean area. The security of these routes depends on the continued pro-Western orientation of the newly independent Island states and on their continued cooperation with the ANZUS alliance.

The treaties will advance U.S. security interests in this vital region. After a thorough review, the Department of The Defense and the Joint Chiefs of Staff determined that the U.S. has no future military requirement for facilities of any kind on any of the islands concerned. We do have an interest, however, in ensuring that this region remains free of Soviet influence. The treaties provide us assurances that the islands will not be made available for possible military use by other powers. In the treaties with Kiribati and Tuvalu, these governments undertake to consult with us on security matters and specifically on any possible future military use of their islands. The Cook Islands and Tokelau, because of their ties with New Zealand, are covered by the ANZUS alliance.

These agreements benefit the U.S. fishing industry. The treaties with both Kiribati nad Tuvalu commit those governments to consult with us on matters of mutual interest relating to the conservation, development, utilization and exploitation of fisheries resources. A provision in the treaty with Tuvalu and an exchange of letters accompanying the treaties with the Cook Islands, New Zealand, and Kiribati assures non-discriminatory access for U.S. fishing vessels and for non-U.S. vessels supplying the canneries of American Samoa, a matter of considerable importance to the economy of that island.

The treaties are also of great value to American Samoa because they establish the maritime boundaries delineating that territory from the Cook Islands and from Tokelau. The US claim to Swains Island, annexed to American Samoa in 1925, is also formally recognized in the agreement with New Zealand on behalf of Tokelau.

The claims to the twenty-five islands in question, which we are relinquishing in these treaties, have little, if any, legal basis or practical value. They were belatedly asserted just prior to World War II, were immediately rejected by Great Britain, and are not recognized

by any other state. (During World War II and in the post war period, we made special agreements with Great Britain permitting us to use some of the islands in question.) The principal basis for our claims were activities undertaken pursuant to the Guano Act of 1856. It is clear that this Act was never intended to serve as a basis for the extension of US sovereignty over islands from which Guano was taken. Certain of the islands were claimed on the basis of discovery or mapping by US vessels in the mid-19th century. However, the US made no attempt to extend its governmental jurisdiction over any of these islands. Unlike territories of the United States, they were not incorporated by act of Congress. They were never administered as part of the United States. What the treaties surrender are unsubstantiated claims, not territory of the US.

On the question of seabed minerals, because data on mineral deposits is imperfect, we cannot rule out the possibility that such deposits may exist in the vicinity of the treaty islands. It may, in fact, be many years before we know the extent of such resources and whether or not they are economically exploitable. However, as a practical matter, companies risking capital on expensive seabed mining operations would prefer to do so in areas where they can be assured that their mining rights are not open to serious legal challenges. Maintenance of our weak and disputed claims to the treaty islands is unlikely to facilitate mineral exploitation by US firms. It could, in fact, impede exploitation. Removal of our claims, the major irritant in our relations with these small islands states, will improve the business climate for US firms interested in mineral extraction. By reason of both geography and technology, the island states are likely to turn to the US for assistance in this field.

There is no region of the world where the United States enjoys more friendly relations than with the Pacific Islands countries. People of this region continue to hold vivid memories of our sacrifices in their defense during World War II, and each of these nations has worked closely with the United States in a variety of regional and international organizations. Most, for instance, have asked for and have received Peace Corps volunteers. The island nations of the Pacific also have close, cooperative ties with our allies—Australia, New Zealand, and Great Britain.

All of the island countries, and not just the parties to these agreements, view these four treaties as an important indication of how the United States intends to conduct its relations with them.

Our Australian and New Zealand allies share the view that the approval of these treaties is important to the protection of our mutual security and political interest in the Pacific region. Prime Minister Muldoon of New Zealand and other representatives of his government have repeatedly urged ratification of all four treaties. The Australian Government has likewise called on us to do the same and Australian Foreign Minister Street recently restated his government's position in the strongest terms in conversations with the Vice President, Secretary Shultz and NSC Director Clark. Our four Ambassadors in the area, Monroe Browne in New Zealand, Robert Nesen in Australia, Fred Eckert in Fiji, and Virginia Schafer in Papua, New Guinea, have also written to encourage prompt acceptance of the treaties. I have enclosed a copy of the Ambassador's letter.

The four treaties in question were voted out by the Senate Foreign Relations Committee were over a year ago. As you know, they have not yet been brought to the floor for a vote. The Administration is hopeful that the Committee will act promptly to return the treaties to the executive calendar to secure final consideration by the Senate.

Sincerely,

POWELL A. MOORE,
Assistant Secretary for Congressional Relations.

Enclosure.

SUVA, FIJI, *November 19, 1982.*

Hon. GEORGE P. SCHULTZ,
Secretary of State.

DEAR MR. SECRETARY: We have just completed a two-day meeting of the region's Chiefs of Mission and feel that we should raise personally with you a problem that could seriously trouble our relations with the South Pacific countries.

In 1979–1980 the United States signed a series of four treaties with Kiribati, Tuvalu, the Cook Islands, and New Zealand (on behalf of Tokelau) which formally relinquished antiquated U. S. claims to a number of small islands in the central South Pacific. The treaties were submitted to the Senate for consideration promptly after their signing and in May 1982 were favorably reported by the Senate Foreign Relations Committee. But full Senate consideration of these treaties keeps getting postponed. We are aware that a few Senators have placed a hold on the treaties, but no reasons for objection have been stated.

In our view, this unexplained delay has caused the United States and President Reagan, who supports the treaties, considerable embarrassment in the South Pacific. If the impasse is not resolved quickly, the Senate's failure to act could have serious consequences for our relations not only with the Pacific island countries involved, but also with New Zealand, which has a direct interest in the matter.

We urge you to raise the matter directly with the Senate leadership and to seek cooperation in having the treaties brought to a prompt vote.

We are deeply concerned that further delay in consideration of these innocuous treaties will injure our relations in the region.

Should you find it useful to do so, please do not hesitate to share this letter with the Senate leadership.

Respectfully,

H. MONROE BROWNE,
Ambassador to New Zealand.
FRED J. ECKERT,
Ambassador to Fiji.
ROBERT D. NESEN,
Ambassador to Australia.
M. VIRGINIA SCHAFER,
Ambassador to Papua New Guinea.

NEW ZEALAND EMBASSY,
Washington, D.C., March 11, 1983.

Hon. GEORGE P. SHULTZ,
Secretary of State,
Department of State.

MY DEAR MR. SECRETARY: I have been requested to pass to you the attached copy of a letter from the Prime Minister of New Zealand, the Rt. Hon. R. D. Muldoon to the Vice President.

I am also sending a copy of this letter to the Chairman of the Senate Foreign Relations Committee Senator Percy.

Yours sincerely,

Rt. Hon. L. R. ADAMS-SCHNEIDER,
Ambassador.

NEW ZEALAND EMBASSY,
Washington, D.C., March 11, 1983.

Hon. CHARLES H. PERCY,
Senate Dirksen Building,
U.S. Senate.

DEAR CHARLES: As you know, my Prime Minister, the Rt. Hon. R. D. Muldoon is taking a close personal interest in the question of the South Pacific Treaties. We were all most grateful for the way you handled this question at the Committee meeting on 8 March and we are looking forward confidently to a successful outcome next week.

The Prime Minister is concerned, however, about the proposal advanced by Senator East in his testimony on 8 March, and endorsed by Senator Helms, that the treaties should be renegotiated or amended by way of reservation. There is no prospect whatever of any amendment or reservation being acceptable and the Prime Minister has today written to Vice President Bush to ensure that there is no misunderstanding on this point.

The Prime Minister has asked me to convey to you a copy of his letter which is attached.

With best wishes,

Yours sincerely,

Rt. Hon. L. R. ADAMS-SCHNEIDER,
Ambassador.

DEAR MR. VICE PRESIDENT: You will recall from our discussions in Wellington in May last year my keen concern, in the wider interests of the United States in the South Pacific, to see the friendship treaties negotiated between the United States and the Cook Islands, Kiribati, Tuvalu and Tokelau ratified as soon as possible.

I have been following closely the progress of the Treaties' hearings in the Senate Foreign Relations Committee under the able Chairmanship of Senator Percy. I note with deep concern not only the delaying tactics adopted by opponents of the Treaties but more importantly their apparent misapprehension of political and historical realities in the region and of where the United States' true interests lie. The evidence and comments presented to the Committee earlier this week by opponents of the Treaties tends to suggest that they believe there is some scope for amendment or re-negotiation.

Against the background set out more fully in a recent letter from our Ambassador to Senator Percy and others—of which you have seen a copy—you will be fully aware that any attempt to renegotiate the Treaties in respect of Tokelau would be unacceptable. While it is for these countries to speak for themselves, I do not believe there are any grounds on which the United States could expect to get a more favourable outcome in renewed negotiations with the Cook Islands, Kiribati and Tuvalu.

It does seem to me that it would be most desirable if the Administration could make this situation clear to those who have expressed doubts about the Treaties before the Senate Committee considers this subject again next Tuesday, 15 March.

I trust that with your understanding of the issues you will do your utmost to ensure that the Committee produces a recommendation for early and positive action by the Senate on the Treaties.

Yours sincerely,

R. D. MULDOON.

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